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U.S. BANKRUPTCY COURT  
MARY A SCHOTT, CLERK

6 UNITED STATES BANKRUPTCY COURT  
7 DISTRICT OF NEVADA

8  
9 **IN RE: EDERLINDA VILLA**

10 Case No.: 10-14307-MKN

11 Chapter 13

12 EDERLINDA VILLA )

13 Plaintiff Petitioner )

14 v. )

15 ONE WEST BANK, FSB fka INDYMAC )

16 BANK, FSB; QUALITY LOAN SERVICE )

17 CORP.; DOES I-X; and ROE )

18 CORPORATIONS XI-XX, inclusive )

19 Defendants )

20 ) **Adversarial Proceedings No. \_\_\_\_\_**

21 **COMPLAINT**

22 This is an adversary proceeding pursuant to Rule 7001, subsections (1) and (2) of the Federal  
23 Rules of Bankruptcy Procedure to recover real property and determine the validity, priority or  
24 extent of Plaintiff's and Defendants' respective interests in the real property located at 10530  
25 Hopemills Drive, Las Vegas, NV 89135 with a legal description of:

26 LOT FORTY-THREE (43) IN BLOCK ONE (1), OF  
27 WISTEREA HILLS IN SUMMERLIN AS SHOWN BY MAP  
28 THEREOF ON FILE IN BOOK 96 OF PLATS, PAGE 93 IN

1 THE OFFICE OF THE COUNTY RECORDER OF CLARK,  
2 COUNTY.  
3 A.P.N. 164-13-615-043

4 **JURISDICTION AND VENUE**

- 5 1. The Court has jurisdiction over this lawsuit because it involves a core matter pursuant to  
6 28 U.S.C. § 1334 and 28 U.S.C. §§ 157(a), (b)(2)(A), (b)(2)(B), (b)(2)(G).
- 7 2. This adversary proceeding relates to *In re Ederlinda Villa*, a Chapter 13 case pending  
8 before the United States Bankruptcy Court for the District of Nevada docketed as case number  
9 10-14307-MKN.
- 10 3. Defendant IndyMac/One West submitted itself to the jurisdiction of this Court when it  
11 filed a motion for relief of stay claim in a previous bankruptcy case filed on or about June 2,  
12 2009 with case number 08-19361
- 13 4. Venue for this matter is proper pursuant to 28 U.S.C. § 1409.
- 14 5. This adversary proceeding constitutes a core proceeding pursuant to 28 U.S.C. §  
15 157(b)(2)(F).

16 **PARTIES**

- 17 6. Plaintiff is the Petitioner in the *In re Ederlinda Villa*, a Chapter 13 case pending before the  
18 United States Bankruptcy Court for the District of Nevada, docketed as case number 10-14307-  
19 MKN.
- 20 7. At all times mentioned herein, Defendant INDYMAC BANCORP, INC. dba INDYMAC  
21 BANK, FSB (hereinafter, "INDYMAC"), was a financial institution operating under the laws of  
22 the State of Nevada who was doing business in the City of Las Vegas, Nevada.
- 23 8. At all times mentioned herein, Defendant ONEWEST BANK, FSB (hereafter,  
24 "ONEWEST") is and was a Delaware corporation and financial institution located at 1209

1 Orange Street, Wilmington, Delaware, operating under the laws of the State of Nevada who was  
2 doing business in the City of Las Vegas, County of Clark, Nevada.

3 9. At all times mentioned herein, ONEWEST was and remains the successor in interest to  
4 Defendant INDYMAC, a financial institution located at 6900 Beatrice Drive, Kalamazoo,  
5 Michigan, operating under the laws of the State of Nevada who was doing business in the City  
6 of Las Vegas, County of Clark, Nevada.  
7

8 10. At all times mentioned herein, Defendant Quality Loan Service Corporation (hereinafter  
9 Quality Loan), is and was a California corporation located at 2141 5<sup>th</sup> Avenue, San Diego,  
10 California and doing business in the City of Las Vegas, County of Clark, Nevada.  
11

12 11. Plaintiff is not aware of the true names and capacities of the defendants sued as DOES 1  
13 through 250, inclusive, and therefore sues such defendants by such fictitious names. Each of  
14 these fictitiously named defendants is responsible in some manner for the activities alleged in  
15 this Complaint. Plaintiff will amend this Complaint to add the true names of the fictitiously  
16 named defendants once they are discovered.  
17

18 12. The defendants identified in paragraphs 1 through 11, *supra*, shall hereinafter be referred  
19 to collectively as "Defendants."

20 13. Whenever reference is made in this Complaint to any act of any Defendant that allegation  
21 shall mean that each defendant acted individually and jointly with the other Defendants.  
22

23 14. Any allegation about any acts of any corporate or other business entity means that the  
24 corporation or business did the acts alleged through its officers, directors, employees, agents  
25 and/or representatives while they were acting within the scope of their authority and/or  
26 employment.  
27  
28

1       15. At all relevant times each Defendant committed the acts, caused or directed others to  
2 commit the acts, or permitted others to commit the acts alleged in this Complaint. Some or all of  
3 the Defendants acted as the agent of the other Defendants and all of the Defendants acted within  
4 the scope of their agency if serving as another's agent.

5       16. At all relevant times each Defendant knew or should have known that the other  
6 Defendants were engaged in or planning to engage in the violations of law alleged in this  
7 Complaint. Each Defendant nevertheless facilitated the commission of those unlawful acts.  
8 Each Defendant intended to and encouraged, facilitated, or assisted in the commission of the  
9 unlawful acts.

10      17. At all relevant times the Defendants have engaged in a conspiracy, common enterprise  
11 and/or common course of conduct, the purpose of which was to engage in the violations of law  
12 alleged in this Complaint. This conspiracy, common enterprise and/or course of conduct  
13 continues to the present.

14      18. The violations of law alleged in this Complaint occurred in Clark County and elsewhere  
15 throughout Nevada and the United States.

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20                   **BACKGROUND FACTS**  
21  
22  
23

24      19. On or about April 15, 2004, Plaintiffs applied for a loan using the Subject Property  
25 hereinabove described as collateral in a contract of mortgage with INDYMAC as lender and  
beneficiary and the Plaintiffs as the borrowers.

26      20. On or about April 15, 2004, Plaintiffs entered into an agreement; a Deed of Trust in the  
27 sum of \$448,000.00 based on a 30-year variable interest rate loan starting at 2.750% APR with a  
28

1 maximum cap of 10.375%, through INDYMAC, as lender, in this transaction payable until May  
2 1, 2034. This loan has attachments which the Defendants' referred to as a "Fixed/Adjustable  
3 Rate Interest only Libor Rider" and "Planned Unit Development Rider". The loan was based  
4 upon Plaintiffs stated income rather than verified income, and their ability to pay the loan.

5 21. The initial payments were \$2, 006.67 for the mortgage.

6 22. The escrow was closed, and Plaintiffs made the mortgage payment and continued to do  
7 so, until the combination of Plaintiffs lack of income and the confusing terms of their loan  
8 caused Plaintiffs to default on the loan at or about one and one-half years after the loan were  
9 originated by Defendants.

10 23. Plaintiffs alleges upon information and belief that Defendants are not the holder of the  
11 original notes identified in the Deed of Trust.

12 24. Plaintiffs further alleges that Defendants do not have the right to cause the foreclosure  
13 and non-judicial sale of the Subject Property owned by Plaintiffs, which non-judicial  
14 foreclosure is set for unknown date.

15 25. Plaintiffs alleges upon information and belief that Defendants are not the holder of the  
16 original notes identified in the Deed of Trust. Plaintiffs further alleges that Defendants do not  
17 have the right to cause the foreclosure and non-judicial sale of the Subject Property owned by  
18 Plaintiffs, which non-judicial foreclosure is set for unknown date.

19 26. This action also concerns Defendants' unlawful, fraudulent and unfair business acts or  
20 practices, Defendants engaged in a campaign of deceptive conduct and concealment aimed at  
21 maximizing the number of consumers who would accept this type of loan in order to maximize  
22 Defendants' profits, even as Defendants knew their conduct would cause many of these  
23 consumers to lose their homes through foreclosure.

## **CLAIMS FOR RELIEF**

27. The following Causes of Action are asserted against the Defendant herein without prejudice to any rights Plaintiff may have, or which this Court may grant to Plaintiff, to assert additional causes of action or allegations based on facts disclosed in documents or other information made available to the Plaintiff in the future or developed as a result of discovery or otherwise.

## **FIRST CLAIM OF RELIEF**

**Defendants Lacks Legal Standing to Conduct and Enforce a Non-Judicial  
Foreclosure**

27. Plaintiffs reallege and incorporate by reference the allegations contained in paragraph 1 to 26 of the Complaint as though herein fully set forth.

28. Plaintiffs submits the opinion and Order of Honorable Judge Christopher A. Boyko in the matter of In Re Foreclosure Cases, United States District Court, Northern District of Ohio (Eastern Division) ruled in favor of 14-homeowners for the lender's (Deutsch Bank) failure to prove ownership of the property under foreclosure.

29. A party seeking to foreclose bears the burden of demonstrating standing and must plead its components with specificity, and must demonstrate that it was the holder and owner of the note and Deed of Trust as of the date of foreclosure. Except as otherwise provided in subsection 3 of this section and subsection 4 of NRS 104.3106, a “holder in due course” means the holder of an instrument if: (1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and (2) The holder took the instrument: (a) for value; (b) in

1 good faith; (c) without notice that the instrument is overdue or has been dishonored or that there  
2 is an uncured default with respect to payment of another instrument issued as part of the same  
3 series; (d) Without notice that the instrument contains an unauthorized signature or has been  
4 altered; (e) Without notice of any claim to the instrument described in NRS 104.3306; and (f)  
5 Without notice that any party has a defense or claim in recoupment described in subsection 1 of  
6 NRS 104.3305.

7  
8 30. Plaintiffs maintains on information and belief that there have been numerous  
9 improprieties in the transfer and appointment of trustees in the handling of their loan, and that  
10 the alleged foreclosing trustee, Defendants QUALITY are not properly appointed as foreclosing  
11 trustee nor acting in conformity with law.

12  
13 31. Plaintiffs upon information and belief none of the Defendants INDYMAC and  
14 QUALITY are holders in possession of the instrument who has the right of the holder and none  
15 of the Defendants are entitled to enforce the instrument. Since there is no right to enforce the  
16 instrument due to the Defendants are not the holders in due course, the Notice of Default and  
17 Notice of Sale provisions of Nevada likewise have never been complied with, and there is no  
18 subsequent incidental rights whatsoever to enforce any Deed of Trust and conduct a non-  
19 judicial foreclosure.

20  
21 32. Plaintiffs further allege that QUALITY as the alleged foreclosing trustee is not legally  
22 the recorded substituted trustee under this Deed of Trust. Plaintiffs never received any notices  
23 with regard to the assignments of the Deed of Trust and the substitution of Trustees. Later on,  
24 Plaintiffs found that INDYMAC recorded a substitution which is dated February 23, 2009. On  
25 or about February 11, 2009 QUALITY acted in behalf of INDYMAC by issuing the Notice of  
26 Default without the recording of the substitution of trustee. Plaintiff maintains that there are  
27  
28

improprieties in the foreclosure of their property for the reason that the substitution was only  
1 recorded after the Notice of Default has been recorded and sent.  
2

3 As a direct and proximate result of the conduct described herein, Plaintiffs have suffered  
4 mental anguish, conscious pain and suffering and mental anguish, conscious pain and suffering  
5 and mental distress from their economic misfortune and must be awarded damages.  
6

7 34. As a direct and proximate result of the above describes conduct of Defendants, Plaintiffs  
8 have sustain in the future, losses, injuries and additional damages of emotional, physical, and  
9 economic nature, and must be awarded appropriate damages.  
10

11 35. As a direct and proximate result of the above described conduct of the Defendants,  
12 Plaintiffs have suffer in the future personal, mental, physical and economic damages in an  
13 amount as the court will determined.  
14

#### **SECOND CLAIM OF RELIEF**

##### **Fraudulent Misrepresentation against Defendants**

16 36. Plaintiff realleges and incorporates by reference the allegations of all causes of action of  
17 this Complaint, *supra* and *ante*, as if fully set forth herein  
18

19 37. A misrepresentation is fraudulent if the maker (a) knows or believes that the matter is  
20 not as he represents it to be; (b) does not have confidence in the accuracy of his representations  
21 that she/he states or implies, or (c) knows that he does not have a basis for her representation  
22 that he states or implies. In order that a fraudulent misrepresentation exists the following  
23 elements should exist: (a) misrepresentation; (b) knowledge of falsity; (c) justifiable reliance;  
24 (d) resulting to damage; (e) induce reliance.  
25

26 38. Plaintiffs alleges that there are improprieties in the transfer of the Deed of Trust  
27 information's from Defendant INDYMAC also demonstrates falsity of the purported  
28

1 assignments of the Deed of Trust from Defendant INDYMAC to Defendant QUALITY.

2 Plaintiffs maintain that this is sham acts without informing and notifying the Plaintiffs.

3 39. Unfortunately the alleged trustee in this foreclosure, Defendant QUALITY are likewise  
4 engaged in attempting to perpetrate a fraud upon Plaintiffs and upon the citizens of Nevada by  
5 purporting to assume the role of foreclosing trustee, in violations of Nevada loan statutes.  
6

7 40. Plaintiffs further alleges that Defendants, and each of them, had a duty and obligation to  
8 represent accurately, truthfully, and completely disclose all the information that Plaintiffs relied  
9 upon in performing their investigation, consideration, and evaluation of whether to obtain  
10 additional mortgage financing, alternate mortgage financing and/or selection of refinancing for  
11 the subject property. The Defendants breached their duty and obligation to provide accurate,  
12 truthful and complete information by failing to provide the necessary information to Plaintiffs in  
13 a manner that they would understand, considering the latter's limited understanding, education,  
14 and training in these matters, and they failed to provide the information necessary for Plaintiffs  
15 to make a complete accurate and well-thought decision on these financial issues, all of which  
16 caused them damage. Plaintiffs relied upon the misrepresentation of the Defendant informing  
17 their decision regarding the loan transactions at issue. Under NRS 205.372 which states that a  
18 person who, with the intent to defraud a participant in a mortgage lending transaction; (a)  
19 Knowingly makes a false statement or misrepresentation concerning a material fact  
20 deliberately conceals or fails to disclose a material fact. (b) knowingly uses or facilitates the use  
21 of a false statement or misrepresentation made by another person concerning a material fact or  
22 deliberately uses or facilitates the use of another person's concealment or failure to disclose a  
23 material fact. (c) Receives any proceeds or any other money in connection with a mortgage  
24 lending transaction that the person knows resulted from a violation of par. (a) or (b). (d)  
25  
26  
27  
28

1 Conspires with another person to violate any of the provisions of par. (a) (b) or (c); or (e) files  
2 or causes to be filed with a County Recorder any document that the person knows to include  
3 a misstatement, misrepresentation or omission concerning a material fact.

4 41. Moreover, Defendants, and each of them, had a duty and obligation to represent  
5 accurately, truthfully, and completely all the information that Plaintiffs relied upon in  
6 performing their investigation, consideration, and evaluation of whether to obtain additional  
7 mortgage financing, alternate mortgage financing, and/or selection of refinancing for the subject  
8 property. The Defendants breached their duty and obligation to provide accurate, truthful and  
9 complete information by failing to provide the information to Plaintiffs in a manner that they  
10 would understand with their limited understanding, education, and training in these matters, and  
11 they failed to provide all the information necessary for Plaintiffs to make a complete accurate  
12 and well-thought decision on these financial issues, all of which caused them damage. Plaintiffs  
13 relied upon the negligent misrepresentations of the Defendants informing their decision  
14 regarding the loan transactions.

15 42. Plaintiffs alleges that they have oral and/or written agreements with all the Defendants  
16 and/or through the Promissory Note and Deed of Trust, all the Defendants were bound by the  
17 agreements, oral or written made by and between Defendants to Plaintiffs. Each agreement  
18 between Defendants and Plaintiffs required that the Defendants deal fairly and in good faith  
19 with Plaintiffs and not to seek to take undue advantage of Plaintiffs in their weakened  
20 bargaining position and with their lesser knowledge, skill, education and ability regarding the  
21 loan transactions.

43. As a direct and proximate result of the conduct described herein, Plaintiffs have suffered mental anguish, conscious pain and suffering and mental anguish, conscious pain and suffering and mental distress from their economic misfortune and must be awarded damages.

44. As a direct and proximate result of the above describes conduct of Defendants, Plaintiffs have sustain in the future, losses, injuries and additional damages of emotional, physical, and economic nature, and must be awarded appropriate damages.

45. As a direct and proximate result of the above described conduct of the Defendants, Plaintiffs have suffered in the future personal, mental, physical and economic damages in an amount as the court will determine.

### **THIRD CLAIM OF RELIEF**

## **Fraudulent Concealment against All Defendants**

46. Plaintiff realleges and incorporates by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein

47. Plaintiffs allege that during the loan application process, Defendants failed to inform Plaintiffs that based solely on their stated income, their credit rating, and the ratio of their assets and liabilities; could not and would not qualify for the subject loan. Plaintiffs' income was never truly verified so much so that in this context, it made the latter believe that their income was commensurate to the loan they applied for. This indicates that the Defendants, and each of them, were satisfied enough to draw the conclusion that the Plaintiffs could adequately repay the loan they applied for that they neglected or deliberately disregarded this otherwise important requisite. A determination of whether Plaintiffs would be able to make the payments as specified in the loan was never truly made where the required loan credit investigation apparently was not conducted for their benefit.

1       48. Plaintiffs allege that they were not informed adequately about the full terms and/or  
2 possible consequences of their loan agreement. Plaintiffs were not informed of the following  
3 including but not limited to: the rate of interest, how interest rate would be calculated, and what  
4 the payment schedule should be, the risks and disadvantages of the loan, the prepay penalties,  
5 the maximum amount the loan payment could arise to, or the inflated valuation of the Real  
6 Property.

7       49. Plaintiffs allege that from and after April 15, 2004 and thereafter, Defendants, and each  
8 of them inclusive of INDYMAC, had a duty to disclose to Plaintiffs that they could not qualify  
9 for the subject loan, but chose not to disclose this information to benefit from the payments  
10 Plaintiffs would make, and did make, on the loan, and would eventually foreclose on the  
11 Subject Property, when Plaintiffs would, and has as of present, default on the loan.

12       50. Plaintiffs allege that at all times relevant, Defendants, inclusive of INDYMAC, failed to  
13 disclose and or concealed material facts by making partial representations of some material facts  
14 such as representing to Plaintiffs that their stated income would be sufficient to qualify them for  
15 the loan, when this Defendants had exclusive knowledge of material facts, namely that Plaintiffs  
16 could not have qualified for a loan in the amount of \$448,000.00, with monthly payments that  
17 would, and did, outstrip Plaintiffs financial ability to generate revenue.

18       51. Plaintiffs allege that had they known the true facts, they would have considered other  
19 options, and would not have obligated themselves to a \$448,000.00 which over time would have  
20 cost them well in excess of the amount loaned.

21       52. Plaintiffs maintain that the Promissory Note and the Deed of Trust dated April 15, 2004  
22 carries the loan number 3535352. The Plaintiffs received a Notice of Default with a loan  
23 number 1004290092. Defendants defrauded them by concealing the status of the true loan  
24

1 entered into under the Deed of Trust. Plaintiffs are liable for a loan 1004290092 which they did  
2 not benefit.

3 53. Plaintiffs allege that as a direct and proximate result of Defendants failure to disclose  
4 and omission of the above-mentioned material facts, as alleged herein, Plaintiffs have suffered  
5 compensatory and equitable damages, in a sum according to proof at trial.

6 54. Plaintiffs allege that the wrongful conduct of Defendants, as alleged herein, was willful,  
7 oppressive, immoral, unethical, unscrupulous, substantially injurious, and malicious and in  
8 conscious disregard for the well being of Plaintiffs, accordingly, Plaintiffs seek damages against  
9 Defendants in an amount to deter Defendants from similar conduct in the future.

10 **FOURTH CLAIM OF RELIEF**

11 **Usury and Fraud against All Defendants**

12 55. Plaintiff realleges and incorporates by reference the allegations of all causes of action of  
13 this Complaint, *supra* and *ante*, as if fully set forth herein.

14 56. Plaintiffs are informed and believes that Defendants disguised the transaction to create  
15 the appearance of the lender being a properly chartered and registered financial institution  
16 authorized to do business and to enter into the subject transaction when in fact the real party in  
17 interest was not disclosed to Plaintiffs, as Plaintiffs are informed and believes and thereon  
18 alleges that, at all times herein mentioned, each of the Defendants and was at all times acting  
19 within the purpose and scope of such agency and employment, and neither were the various  
20 fees, rebates, refunds, kickbacks, profits and gains of the various parties who participated in this  
21 unlawful scheme.

22 57. As such this fraudulent scheme (which was I actuality a plan to trick the Plaintiffs into  
23 signing what would become a negotiable security used to sell unregulated securities under  
24  
25

1 fraudulent and changed terms from the original loan) was in fact a sham to use Plaintiffs interest  
2 in the Real Property to collect in excess of the legal rate.

3 58. The transaction involved a loan of money pursuant to a written agreement, and as such,  
4 subject to the rate limitation set forth under State and Federal law the formula rate referenced in  
5 those laws was exceeded by a factor in excess of ten contrary to the applicable law.  
6

7 59. That the defendants failed to disclose to the Plaintiffs that the loan obtain has an interest  
8 rate higher than that rate reflected in preliminary disclosures and do not fall within the  
9 tolerance as required by NRS 99.050. That although there are no usury laws, per se, in  
10 Nevada and no statutory restrictions on late charges, prepayment penalties or points, interests  
11 especially compounded ones must be specifically agreed to in writing NRS 99.050.  
12 Besides, the state of Nevada adopted a statute called "predatory lending statute" which  
13 requires additional disclosures and restricts certain charges and fees on certain loans. NRS  
14 598D, basically, applies to any loan which is under section 152 of the Home Ownership and  
15 Equity Protection Act of the Federal Truth in Lending requirements. Failure to give the  
16 appropriate disclosures can have severe penalties including the elimination of all interest  
17 provided in the loan applying all payments made by the borrower event those not made to  
18 the lenders like appraisal fees and other cost of escrow to the principal of the loan and  
19 reconveyance of the Deed of Trust.  
20

21 60. Although Nevada is one of only of few states in the United States that completely lacks  
22 a usury limits when it comes to personal loan or to any other type of financing in Nevada, it  
23 does not mean that there are not some restrictions when it comes to loan and lending as well  
24 as interest rates that are permissible in Nevada. Nevada has a legal interest rates on personal  
25 loan established at 12%.  
26  
27

61. Courts in Nevada have been equally (comparatively) liberal when it comes to issues involving lending practices and interests rates. Acting on equitable principles, courts have been known to refashion personal loan agreements that had higher interest rates when the occasion or situation arises. In other words, some courts in Nevada have refashioned a loan agreement by lowering the interest rate and then enforcing the loan agreement with the revised interest rate inserted therein.

62. Under applicable law, the interest charged on this usurious mortgage prevents any collection or enforcement or principal or interest of the note, void any security interest there on, and entitles the Plaintiffs to recovery of all money or value paid to Defendants, plus treble damages, interest and attorney's fees.

63. Under applicable law, Plaintiffs are also entitled and demand permanent injunction being entered against the Defendants (a) preventing them from taking any action or making any report in furtherance of collection on this alleged debt which was usurious, as aforesaid; (b) requiring the records custodian of the County in which the alleged mortgage and other instruments are recorded to remove same from the record; (c) allowing the filing of said order in the office of the Clerk of the property records where the Subject Property, "loan transaction" and any other documents relating to this transaction are located and (d) dissolving any lis pendens or notice of pendency relating to the Defendant purported claim.

## **FIFTH CLAIM OF RELIEF**

#### **Unconscionability against all Defendants**

## **CONSPIRACY TO DEFRAUD**

## [Against Defendants IndyMac/One West and Residential Mortgage]

1       85. Plaintiff realleges and incorporates by reference the allegations of all causes of action of this  
2       Complaint, *supra* and *ante*, as if fully set forth herein.

3       86. All Defendants had a duty to provide Plaintiff with accurate, truthful and complete  
4       information regarding the subject loan transaction; as previously alleged, each and all  
5       Defendants acted as agents and representatives of each other.

6       87. In particular, Defendant Residential Mortgage was an agent and representative of Defendant  
7       Indy Mac regarding Plaintiff's loan to purchase the subject property, and at all times acted within  
8       the scope of that agency. Defendant One West, as purported successor in interest to Indy Mac  
9       and through Defendant Residential Mortgage as its authorized agent, fraudulently misled  
10      Plaintiff into believing that she was qualified for, and capable of performing under the terms of,  
11      that mortgage loan contract, and they fraudulently misled Plaintiff and concealed from her  
12      material information vis a vis material terms of the loan contract (see Plaintiff's third through  
13      fifth causes of action, previously incorporated herein by reference).

14      88. By committing the acts and/or failures to act, making the representations and engaging in the  
15      concealment set forth in all causes of action of this Complaint, all Defendants and each of them  
16      acted with a common design intentionally and for the express purpose of inducing Plaintiff to  
17      enter a profoundly disadvantageous mortgage loan contract designed to lead to an inevitable  
18      foreclosure.

19      89. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered  
20      economic and additional damages according to proof. Additionally, because Defendants and  
21      each of them acted with malice and oppression, Plaintiff is entitled to an award of punitive  
22      damages.

1       90. Further, Plaintiff is informed and has reason to believe that all Defendants acts and  
2 omissions, as set forth in all causes of action of this Complaint (previously incorporated herein  
3 by reference) were part of a interstate common design and pattern of practice intentionally and  
4 for the express purpose of illegally inflating Defendants' Nevada and national profits from  
5 mortgage loan and mortgage loan securities transactions.  
6

7       91. When it entered into the mortgage loan contract with Plaintiff on June 5, 2008, Defendant  
8 IndyMac knew or had reason to know that it was on the brink of failure and would be out of  
9 business in approximately one month. Defendant Indy Mac failed and was taken over by the  
10 Federal Deposit Insurance Corporation on July 11, 2008. Defendant IndyMac also knew or  
11 should have known of the precise risks and dangers to homeowners associated with mortgage  
12 loan contracts of the nature it executed with Plaintiff, and had a duty to advise Plaintiff of said  
13 risks and dangers prior to execution of the contract.  
14

15       92. Defendant IndyMac was a national bank that offered mortgage loans to homeowners. A large  
16 number of these loans were "option ARM" ("Adjustable Rate Mortgage") mortgages using stated  
17 income programs. These loans were offered by IndyMac directly, and also through Mortgage  
18 Brokers, who funded the loans and allowed IndyMac to buy them and reimburse the mortgage  
19 banker or broker.  
20

21       93. The loans were sold to homeowners by Mortgage Brokers who desired the large rebates that  
22 Defendant IndyMac offered for the loans. The rebates were usually about three points. When the  
23 loans were sold to Wall Street, they were securitized through pooling and servicing agreements.  
24

25       94. When an option ARM loan was sold as a Wall Street security, Defendant IndyMac realized  
26 from four to six points, and the three point rebate to a broker was paid from these proceeds.  
27 Consequently, Defendant IndyMac itself "earned" three points for each loan sold.  
28

1       95. Even though IndyMac sold off most loans, they still held a large number of option ARMs  
2 and other loans in their portfolio. Plaintiff is informed and has reason to believe that Defendant  
3 OneWest now claims that it is not doing loan modifications because their pooling and servicing  
4 agreements do not allow for loan modifications. However, Plaintiff is informed and has reason to  
5 believe this condition, if it exists, was created by design by Defendants IndyMac and One West  
6 to promote foreclosures and thereby increase profits. Plaintiff is informed and has reason to  
7 believe that, in the pooling and servicing agreement covering Plaintiff's mortgage loan, the  
8 sponsor for the trust is Defendant IndyMac, the Seller for the trust is Defendant IndyMac, the  
9 depositor for the trust is Defendant IndyMac, the issuing entity for the trust is Defendant  
10 IndyMac and the master servicer for the trust is, again, Defendant IndyMac. In other words,  
11 Defendant IndyMac was the only party involved in the pooling and servicing agreement.

12      96. Defendant OneWest was created on Mar 19, 2009 from the assets of Defendant IndyMac; it  
13 was created solely for the purpose of absorbing Defendant IndyMac. Defendant Quality Loan is  
14 an agent and representative of Defendant OneWest with respect to the foreclosure actions at  
15 issue in this litigation.

16      97. Plaintiff is informed and has reason to believe that, in violation of Nevada and federal law, as  
17 part of this business formation and transfer of assets, Defendants IndyMac, One West and  
18 Quality Loan, with a common purpose and design in the transfer mortgage loan assets –  
19 including but not limited to Plaintiff's mortgage loan, established loan modification and  
20 foreclosure policies, processes and procedures with the express purpose of discouraging loan  
21 modifications, workouts and forbearances and increasing more-profitable foreclosures.

22      98. Defendants IndyMac and OneWest executed a contract covering the sale and/or transfer of  
23 IndyMac's assets. Plaintiff is informed and has reason to believe that this contract establishes  
24

1 that Defendant OneWest would purchase all first mortgages such as Plaintiff's at seventy percent  
2 of the current balance, and that, in the event of foreclosure, the Federal Deposit Insurance  
3 Corporation would cover from eight to ninety five percent of losses, using the original loan  
4 amount and not the current balance.

5 99. Consequently, Plaintiff is informed and has reason to believe, in designing and implementing  
6 their contract for the transfer and administration of mortgage loan assets (securitized and non-  
7 securitized), Defendants IndyMac and OneWest acted with a common purpose and design to  
8 unfairly inflate their profits by creating internal policies and procedures that illegally prevent  
9 and/or interfere with Plaintiff's and other homeowners' ability to meaningfully participate in  
10 home loan modification programs provided through Nevada and federal statutes  
11

12 100. Plaintiff is informed and has reason to believe that Defendant OneWest as a matter of  
13 pattern and practice receives profits in additional income above the actual purchase price of a  
14 home loan in foreclosure such as Plaintiff's amount after it receives the FDIC reimbursement.  
15 Consequently, neither Defendant OneWest Bank nor its agent and/or have any meaningful  
16 intention of conducting home loan modifications or complying with state and federal statutes that  
17 promote home loan modifications for individuals such as Plaintiff. Any loan modification means  
18 that Defendants OneWest and Quality Loan would lose this additional profit.  
19

20 101. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered  
21 economic and additional damages according to proof. Additionally, because Defendants and  
22 each of them acted with malice and oppression, Plaintiff is entitled to an award of punitive  
23 damages.  
24

26 **SIXTH CLAIM OF RELIEF**  
27

28 **Unjust Enrichment and Civil Conspiracy against All Defendants**

1       102. Plaintiff realleges and incorporates by reference the allegations of all causes of action of  
2       this Complaint, *supra* and *ante*, as if fully set forth herein.

3       103. Defendants implied contract with the Plaintiffs to ensure that Plaintiffs understood all  
4       fees, which would be paid to the Defendants to obtain credit on Plaintiffs behalf and to not  
5       charge any fees, which was not related to the settlement of the loan and without full disclosure  
6       to Plaintiffs.

7       104. Defendants cannot, in good conscience and equity, retain the benefits from their actions  
8       of charging a higher interest rate, fees, rebates, kickbacks, profits (including but not limited to  
9       from sale of mortgages and notes using Plaintiffs identity, credit score and reputation without  
10      consent, right, justification or excuse as part of an illegal enterprise scheme) and gains and fee  
11      unrelated to the settlement services provided at closing.

12      105. Defendants have been unjustly enriched at the expense of the Plaintiffs, and  
13      maintenance of the enrichment would be contrary to the rules and principles of equity.

14      106. In connection with the application for and consummation of the mortgage loan the  
15      subject of this action, Defendants agreed, between and among themselves, to engage in actions  
16      and a course of conduct designed to further an illegal act or accomplish a legal act by unlawful  
17      means, and to commit one or more overt acts in furtherance of the conspiracy to defraud the  
18      Plaintiffs.

19      107. Defendants agreed between and among themselves to engage in the conspiracy to  
20      defraud for the common purpose of accruing economic gains for themselves at the expense of  
21      and detriment to the Plaintiffs.

22      108. The actions of the Defendants were committed intentionally, willfully, wantonly, and  
23      with reckless disregard for the rights of the Plaintiffs.

109. Plaintiffs thus demands restitution from the Defendants in the form of actual damages,  
1 exemplary damages, and attorney's fees.  
2

3 110. As a direct and proximate result of the actions of the Defendants in combination  
4 resulting in fraud and breaches of duties, Plaintiffs have suffered damages.  
5

6 111. Plaintiffs thus demand an award of actual, compensatory and punitive damages.  
7

### SEVENTH CLAIM OF RELIEF

#### QUIET TITLE

9 112. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 to 71 of  
10 the Complaint, as though herein fully set forth.  
11

12 113. Plaintiffs are the owners of the Subject Property per the Deed of Trust executed by  
13 Plaintiffs.  
14

15 114. The basis of Plaintiffs interest in title is a Deed of Trust from Defendants, granting the  
16 Subject Property to Plaintiffs, and recorded in the Official Records of the County of Clark.  
17

18 115. Plaintiffs are seeking to quiet title against the claims of Defendants as follows:  
19 Defendants are seeking to hold themselves out as the fee simple owners of the subject  
20 properties, when in fact they do not have possession of the original note signed in ink by the  
21 Plaintiffs and in fact Plaintiffs have an interest in such properties held by Defendants, when  
22 Defendants have no right, title, interest, or estate in the Subject Property, and Plaintiffs interest  
23 is adverse to Defendants' claims of ownership.  
24

116. Plaintiffs seek to quiet title as of April 15, 2004.  
25

26 117. Plaintiffs therefore seeks a judicial declaration that the title to the Subject Property is  
27 vested in Plaintiffs alone and that defendants INDYMAC lender, and foreclosing trustee  
28 QUALITY be declared to have no estate, right, title, or interest in the Subject Property and that  
29

1 said defendants, and each of them, be forever enjoined from asserting any estate, right, title, or  
 2 interest in the Subject Property, adverse to Plaintiffs herein.

3 **EIGHT CLAIM OF RELIEF**

4 **DECLARATORY AND INJUNCTIVE RELIEF**

5 [Against All Defendants]

6  
 7 118. Plaintiff realleges and incorporates by reference the allegations of all causes of action of this  
 8 Complaint, *supra* and *ante*, as if fully set forth herein.

9  
 10 119. An actual controversy exists as to all legal and factual issues raised throughout this  
 11 Complaint and incorporated by reference herein. As evidenced by their previously filed  
 12 Demurrer to Plaintiff's First Amended Complaint, Defendants object to and disagree with all of  
 13 Plaintiff's allegations, including but not limited to Plaintiff's claims that: a. none of these  
 14 Defendants are parties to an express binding agreement with Plaintiff. Further, as set forth in the  
 15 Complaint,

- 16       a. any purported "binding" agreement between Plaintiff and Defendant IndyMac is  
 17           legally deficient, void and/or voidable ;
- 18       b. the purported non-judicial foreclosure on the subject property was not conducted in  
 19           accord with controlling statutes and was based upon improperly assigned, void and/or  
 20           voidable documents;
- 21       c. Defendants failed to provide Plaintiff with full disclosure of the material terms of her  
 22           home loan, and fraudulently induced her to execute the loan contract;
- 23       d. Defendants sold a loan to Plaintiff for which she was not qualified based upon her  
 24           actual income, credit history, and debt and asset ratio;;

1 e. Defendants filed their notice of default and commenced foreclosure against her without  
2 complying with the loan modification and foreclosure avoidance mandates of NRS  
3 107.080 and AB 146.

4 120. Plaintiff desires a judicial determination of his rights and duties, and a declaration from this  
5 Court as to the validity of the original mortage loan agreements, the subsequent purported  
6 assignments of the deed of trust and/or mortgage note, and Defendants' non-judicial foreclosure  
7 on the subject property.

8 121. A judicial declaration is necessary and appropriate at this time under the circumstances so  
9 that all parties may ascertain their legal rights to the subject property.

10 122. Defendants' actions have undermined Plaintiff's rights to and enjoyment of the subject  
11 property and have interfered, and will continue to interfere with Plaintiff's right of possession as  
12 the owner of the subject property.

13 123. As demonstrated by the facts and legal authority set forth throughout this Complaint and  
14 incorporated by reference herein, Plaintiff has a strong likelihood of prevailing on the merits.

15 124. Plaintiff requests that this court grant a Preliminary Injunction and Temporary Restraining  
16 Order and issue injunctive relief to bar any further action to list the subject property for a non-  
17 judicial sale pursuant to foreclosure proceedings, to preclude Defendants from engaging in the  
18 wrongful conduct identified herein in the future.

22 **PRAYER FOR RELIEF**

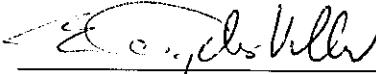
23 WHEREFORE, Plaintiff Ederlinda Villa prays for judgment as follows:

24 1. For rescission of the loan and cancellation of the deed of trust and note on the subject real  
25 property.

- 1       2. For an Order enjoining and/or restraining defendants from proceeding with any foreclosure,
- 2           sale, transfer, unlawful detainer or any other action pertaining to the subject real property
- 3           unless and until it can present proof that it is entitled enforce the underlying promissory note
- 4           described in the deed of trust for the subject property;
- 5       3. For general damages;
- 6       4. For compensatory damages – in particular, due to the absence of any legally valid “binding
- 7           express agreements” between Plaintiff and any Defendant, and all Defendants’ failures to
- 8           make any restitution to him, Plaintiff can sustain an equitable theory such as unjust
- 9           enrichment to
- 10          recover the undeserved economic boon that inured to each Defendant from their receipt of his
- 11           mortgage payments, associated fees and charges, etc. (See *Lauriedale Assocs. v. Wilson*
- 12           (1992) 7 Cal.App.4th 1439, 1448.);
- 13       5. For special damages according to proof;
- 14       6. For exemplary and punitive damages according to proof;
- 15       7. For costs of suit herein incurred;
- 16       8. For an award to plaintiff for monetary damages against all Defendants jointly, severally,
- 17           that Plaintiffs incurred due to the need to bring this action for injunctive relief according to
- 18           proof;
- 19       9. For an award of statutory damages to plaintiffs for Unfair Debt Collection practices under
- 20           Nevada statutes;
- 21       10. For attorneys fees as permitted by law;
- 22       11. For treble damages as permitted by law;
- 23       12. For prejudgment interests as permitted by law; and
- 24

14. For such other and further relief as the court may deem proper.

1 DATED: March 18, 2010  
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EDERLINDA VILLA  
Attorney for Plaintiff/Petitioner  
*Pro Se*

1  
2                   PROOF OF SERVICE  
3

4                   CCP. SECTIONS 1013a, 2015.5  
5

6                   I am a citizen of the United States and a resident of Clark County; I am over the  
7                   age of eighteen years and not a party to the within action; On March \_\_, 2010, I served a  
8                   copy of the attached:

9                   **ADVERSARIAL PROCEEDINGS**  
10

11                  XX by placing said copy in a sealed envelope with postage thereon fully  
12                  prepaid, following ordinary business practices, said correspondence to be deposited with  
13                  the United States Postal Service, that same day in the ordinary course of business, at Las  
14                  Vegas, Nevada addressed as set forth below.

15                  \_\_\_\_ by personally delivering a true copy thereof to the person(s) at the  
16                  address(es) as set forth below.

17                  \_\_\_\_ by sending a copy to Facsimile number      the person at the address(es) as  
18                  set forth below.

19                  \_\_\_\_ by placing said copy in a sealed envelope, in the area designated for  
20                  overnight, express mail pick-up, addressed as set forth below.

21                  **ONEWEST BANK, FSB**

22                  1209 Orange Street,  
23                  Wilmington, Delaware,

24                  **ONEWEST (INDYMAC)**

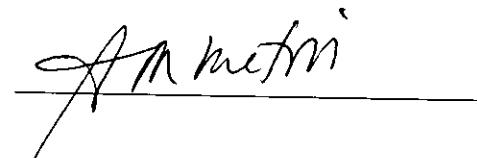
25                  6900 Beatrice Drive,  
26                  Kalamazoo, Michigan 49003

27                  **QUALITY LOAN SERVICE CORP.**

28                  2141 5<sup>th</sup> Avenue,  
29                  San Diego, California 92101

30                  I declare under penalty of perjury under the laws of the State of Nevada that the  
31                  foregoing is true and correct.

32                  Dated: March 18, 2010



PROOF OF SERVICE